

Appl. No. : **09/818,134**
Filed : **March 27, 2001**

REMARKS

The Applicant thanks the Examiner for his examination of the present application. By way of summary, Claims 1-34 were pending in this application. In the Office Action, the Examiner rejected Claims 1-34. In particular, the Examiner objected to Claims 3-9, 20, 22-24, 27, and 30 because of the use of the term "may be." In addition, the Examiner rejected Claims 1, 10-13, 15-20, and 25-32 under 35 U.S.C. § 102(e) as being anticipated by U.S. Publication No. 2002/0026521 A1 to Sharfman et al. ("Sharfman"). The Examiner further rejected Claims 3-5, 7-8, and 24 under 35 U.S.C. § 103(a) as being unpatentable over Sharfman in view of U.S. No. 6,879,988 to Basin, et al. ("Basin"). The Examiner further rejected Claims 2, 14, and 21-23 under 35 U.S.C. § 103(a) as being unpatentable over Sharfman in view of "The Lharc/LHA Archiver" by Mille Babic ("Babic"). The Examiner further rejected Claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Sharfman in view of Basin and in further view of U.S. Patent No. 6,668,244 to Rourke et al. ("Rourke"). The Examiner further rejected Claim 9 under 35 U.S.C. § 103(a) as being unpatentable over Sharfman in view of Basin and in further view Babic. The Examiner further rejected Claims 33 and 34 under 35 U.S.C. § 103(a) as being unpatentable over Sharfman in view of "Petite Win32 Executable Compressor" version 2.2 by Luck ("Luck").

Applicant has amended Claims 1, 3, 12, 20-22, 24, 27, and 30. Claims 2, 4-11, 13-19, 23, 29, and 33-34 remain as originally filed, and Claims 25-26, 28, and 31-32 remain as previously pending. Thus, Claims 1-34 remain pending.

A. OBJECTION TO CLAIMS 3-9, 20, 22-24, 27, AND 30

The Examiner objected to Claims 3-9, 20, 22-24, 27, and 30 because of the use of the term "may be." Applicant respectfully disagrees with the Examiner's objection, but in order to further prosecution of this Application, Applicant has amended Claims 3, 20, 22, 24, 27, and 30 without altering their scope in order to clarify the features of Applicant's inventions. These claim amendments are not made for patentability purposes, and it is believed that the claims would satisfy the statutory requirements for patentability without the entry of such amendments. Applicants therefore respectfully submit that Claims 3-9, 20, 22-24, 27, and 30 are ready for allowance and request that the Examiner withdrawal of the objection to Claims 3-9, 20, 22-24, 27, and 30.

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B. REJECTION OF CLAIMS 1, 10-13, 15-20, AND 25-32 UNDER 35 U.S.C. § 102

The Examiner rejected Claims 1, 10-13, 15-20, and 25-32 under 35 U.S.C. § 102(e) as being anticipated by U.S. Publication No. 2002/0026521 A1 to Sharfman et al. ("Sharfman").

1. Rule 131 Declaration

Applicants submit herewith a Rule 131 Declaration ("Declaration") and corresponding Exhibits 1, 2, 3, and 4, where Exhibit 4 includes Exhibits A, B, and C. This Declaration establishes that the presently claimed invention pre-dates the filing date of Sharfman. The Declaration is submitted with the signature of the assignee, RealNetworks, Inc. since the sole inventor is unavailable as set forth in the Declaration. *See* M.P.E.P. § 715.04.

The Declaration establishes that the features of the invention were conceived of and reduced to practice prior to January 10, 2001, which predates the filing date of Sharfman. Thus, Applicants respectfully submit that the cited reference is not available as prior art, and request that the rejection under 35 U.S.C. § 102(e) be withdrawn.

As set forth in 37 C.F.R. § 1.131, a patent applicant "may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based." *See also*, M.P.E.P. § 715. "The affidavit or declaration must state FACTS and produce such documentary evidence and exhibits in support thereof as are available to show conception and completion of the invention in this country ... at least conception being at a date prior to the effective date of the reference." *See* M.P.E.P. § 715.07, Section III (emphasis in original). The showing of facts must be sufficient to show "(A) reduction to practice of the invention prior to the effective date of the reference; or (B) conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the reference date to a subsequent (actual) reduction to practice; or (C) conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the reference date to the filing date of the application (constructive reduction to practice)." *See id.*

The Declaration shows that the features of the pending claims, Claims 1-34, were conceived and reduced to practice prior to January 10, 2001 in this country. Since Sharfman was filed on January 10, 2001, Applicants submit that Sharfman is removed from use as a reference for the pending claims.

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Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejections to Claims 1, 10-13, 15-20, and 25-32 under 35 U.S.C. § 102(e).

2. Traversal of the Rejection

In addition, Applicants respectfully submit that even if Sharfman were a proper reference, which it is not, Sharfman does not disclose the claimed features of Claims 1, 10-13, 15-20, and 25-32.

3. Amended Claims

Applicant has amended Claims 1 and 12 without altering their scope in order to clarify the features of Applicant's inventions. As discussed above, Claims 20, 27, and 30 have also been amended. These claim amendments are not made for patentability purposes, and it is believed that the claims would satisfy the statutory requirements for patentability without the entry of such amendments.

Applicants therefore respectfully submit that Claims 1, 10-13, 15-20, and 25-32 are ready for allowance and request that the Examiner withdrawal of the rejection to Claims 1, 10-13, 15-20, and 25-32.

C. REJECTION OF CLAIMS 2-9, 14, 21-24, AND 33-34 UNDER 35 U.S.C. § 103

The Examiner rejected Claims 2-9, 14, 21-24, and 33-34 under 35 U.S.C. § 103(a) as being unpatentable over Sharfman in further view of other references. In particular, the Examiner rejected Claims 3-5, 7-8, and 24 under 35 U.S.C. § 103(a) as being unpatentable over Sharfman in view of U.S. No. 6,879,988 to Basin, et al. ("Basin"). The Examiner further rejected Claims 2, 14, and 21-23 under 35 U.S.C. § 103(a) as being unpatentable over Sharfman in view of "The Lharc/LHA Archiver" by Mille Babic ("Babic"). The Examiner further rejected Claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Sharfman in view of Basin and in further view of U.S. Patent No. 6,668,244 to Rourke et al. ("Rourke"). The Examiner further rejected Claim 9 under 35 U.S.C. § 103(a) as being unpatentable over Sharfman in view of Basin and in further view Babic. The Examiner further rejected Claims 33 and 34 under 35 U.S.C. § 103(a) as being unpatentable over Sharfman in view of "Petite Win32 Executable Compressor" version 2.2 by Luck ("Luck").

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1. Rule 131 Declaration

In view of the arguments as to the Declaration above, Applicants respectfully submit that Sharfman is removed from use as a reference for Claims 2-9, 14, 21-24, and 33-34. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejections to Claims 2-9, 14, 21-24, and 33-34 under 35 U.S.C. § 103.

2. Traversal of the Rejection

In addition, Applicants respectfully submit that even if Sharfman were a proper reference, which it is not, Sharfman does not, alone or in combination with the other cited references, disclose the claimed features of Claims 2-9, 14, 21-24, and 33-34.

3. Amended Claims

Applicant has amended Claim 21 without altering its scope in order to clarify the features of Applicant's invention. As discussed above, Claims 3, 22, and 24 have also been amended. These claim amendments are not made for patentability purposes, and it is believed that the claims would satisfy the statutory requirements for patentability without the entry of such amendments.

Applicants therefore respectfully submit that Claims 2-9, 14, 21-24, and 33-34 are ready for allowance and request that the Examiner withdraw the rejection to Claims 2-9, 14, 21-24, and 33-34.

D. REQUEST FOR TELEPHONE INTERVIEW

Pursuant to M.P.E.P. § 713.01, in order to expedite prosecution of this application, Applicants' undersigned attorney of record hereby formally requests a telephone interview with the Examiner as soon as the Examiner has considered the effect of the arguments presented above. Applicants' attorney can be reached at (949) 721-7603 or at the number listed below.

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E. CONCLUSION

In view of the forgoing, the present application is believed to be in condition for allowance, and such allowance is respectfully requested. If further issues remain to be resolved, the Examiner is cordially invited to contact the undersigned such that any remaining issues may be promptly resolved. Also, please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: Jan. 6, 2005

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